[Cite as *Halloran v. Barnard*, 2017-Ohio-1069.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

MICHAEL J. HALLORAN,	:	
Plaintiff-Appellant,	:	Case No. 16CA9
vs.	:	
DEBRA L. BARNARD,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellee.	:	

APPEARANCES:

Randall L. Lambert, Ironton, Ohio, for appellant

Daniel P. Ruggiero, Portsmouth, Ohio, for appellee

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 3-8-17
ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Common Pleas Court judgment that dismissed a negligence complaint filed by Michael J. Halloran, plaintiff below and appellant herein, after the jury returned a verdict finding that Debra L. Barnard, defendant below and appellee herein, was not negligent.[1] Appellant raises the following assignments of error for

[1] We note that the trial court's judgment does not set forth the jury's verdict or indicate that the court entered judgment in appellee's favor. The court's entry nevertheless appears to satisfy Civ.R. 58(A) and 54(A), which "require no more than a clear and concise pronouncement of the court's judgment." *Rogoff v. King,* 91 Ohio App.3d 438, 449, 632 N.E.2d 977 (8th Dist.1993). The court's judgment entry reads:

> This action came on for trial to a jury and the issues having been presented to a jury and the jury having

review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT ERRED WHEN IT INCLUDED IN THE INSTRUCTIONS TO THE JURY AN INSTRUCTION REQUIRING PLAINTIFF TO SHOW PROXIMATE CAUSE OF THE ACCIDENT."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT ERRED IN INSTRUCTING THE JURY AS TO RIGHT-OF-WAY WHEN SUCH INSTRUCTION WAS NOT APPLICABLE TO THE FACTS."

{¶ 2} The parties do not dispute the basic facts. A motor vehicle collision occurred when appellant, while driving his motorcycle and approaching appellee's vehicle from behind, crossed a double-yellow line in an attempt to pass appellee's vehicle on the left-hand side as appellee was executing a left turn to go into a parking lot.[2]

{¶ 3} Appellant subsequently filed a negligence complaint against appellee and alleged that appellee negligently operated her automobile and that her negligence proximately caused appellant to suffer injuries. Appellant further claimed that appellee violated R.C. 4511.31 by failing to provide a proper lookout for an overtaking vehicle, and thus, was negligent per se.

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rendered its verdict.

It is ordered that the plaintiff, Michael J. Holloran take nothing and that the action be dismissed on the merits.

Costs to this proceeding to be assessed to plaintiff.

The clerk shall mail a copy of this entry to all counsel of record and to each party not in default who is not represented and note the service in the appearance docket.

This is a final appealable Order.

[2] Appellant did not request a transcript of the proceedings, and the parties did not submit an agreed statement of facts. Our rendition of the facts is thus limited to the facts the parties do not dispute, as recounted in their briefs.

{¶ 4} Before trial, the parties stipulated to the following: (1) the "case will proceed to jury trial on liability only"; (2) if appellant "is found to be 51% or greater at fault for the accident, a defense verdict will be entered by the Trial Court Judge"; (3) if appellee "is found to be 50% or greater at fault for the accident, the Trial Court Judge will enter a plaintiff's verdict in the amount of $100,000"; and (4) "[j]ury interrogatories on comparative negligence will be used to establish the percentage of negligence (if any) attributable to each party."

{¶ 5} Additionally, each party submitted proposed jury instructions. Appellant's "proximate cause" section states:

> A party who seeks to recover for damages must prove not only that the other party was negligent, but also that such negligence was a proximate cause of the injury.
>
> Proximate cause is an act or failure to act which in the natural and continuous sequence directly produces the injury complained of and without which it would not have occurred. Cause occurs when the injury is the natural and foreseeable result of the act or failure to act.
>
> There may be more than one proximate cause. When the negligent act, or failure to act, of one party combines with or joins the negligence of each is a cause. It is not necessary that the negligence of each occur at the same time nor that there be a common purpose or action.
>
> A person is not responsible for injury to another if his negligence is a remote cause and not a proximate cause. A cause is remote when the result could not have been reasonably foreseen or anticipated as being the natural or probable cause of any injury.
>
> Under the facts of this case, in order to prevail, plaintiff must convince you by a preponderance of the evidence not only that the defendants [sic] somehow failed to meet the requisite standard of acre, but also that this failure in probability proximately caused the injuries complained of by plaintiff.
>
> The test for foresee ability [sic] is not whether he or she should have foreseen the injury precisely as it happened to a specific person. The test is whether under all the circumstances a reasonably cautious, prudent person would have anticipated that injury was likely to result to someone from the act or failure to act.

{¶ 6} Appellant's proposed negligence instruction states: "A person is not negligent

unless a failure to use ordinary care or an act or failure to act as the law requires is proved by the greater weight of the evidence."

{¶ 7} Appellant's instructions further proposed that the court give the jury the following "disputed issues" instruction: (1) "Was [appellee] negligent in any respect? If so, was the negligence of [appellee] a proximate cause of any injury sustained by [appellant]?"; and (2) "Was [appellant] negligent in any respect? If so, was the negligence of [appellant] a proximate cause of any injury sustained by [appellant]?"

{¶ 8} Appellant additionally requested the court to instruct the jury in accordance with the following instruction, entitled, "Failure to Give Right of Way by Overtaken Vehicle":

> 1. GENERAL. The plaintiff claims that, while he was passing the defendant, the defendant negligently failed to give way to the right in favor of the plaintiff which proximately caused injury to the plaintiff.
>
> 2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that
>
> (a) the defendant failed to give way to the right in favor of the plaintiff who was overtaking the defendant after an audible signal from the plaintiff; and
>
> (b) this negligence proximately caused injury to the plaintiff.
>
> 3. NEGLIGENCE. If you find by the greater weight of the evidence that the defendant failed to give way to the right in favor of the plaintiff, who was overtaking the defendant after an audible signal from the plaintiff, you must find that the defendant was negligent.

{¶ 9} Appellee's proposed jury instruction suggested that the trial court give the jury the following "right of way" instruction:

> 1. DEFINED. "RIGHT OF WAY" means the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which he or she is moving in preference to another vehicle approaching from a different direction into his or her path.
>
> 2. APPROACHING. The word approaching means that a vehicle is so close in distance and time that a collision will occur if the driver who does not have the right of way does not stop or reduce his or her speed and yield the right

> of way to the preferred party.
>
> 3. IN A LAWFUL MANNER. To keep his right of way as a preferred party to continue to travel uninterruptedly, the driver must operate his vehicle in a lawful manner. If he does not do so, he loses the right of way and his status as the preferred party.
>
> 4. LOSS OF RIGHT OF WAY. If a preferred party loses the right of way by not proceeding in a lawful manner, each party then must use ordinary care under the circumstances.
>
> 6. [sic] RIGHTS OF A PREFERRED PARTY. The driver of a vehicle who has the right of way has the right to travel uninterruptedly in a lawful manner. He has the right to rely upon his preferred status and to assume, in the absence of knowledge to the contrary, that others will obey the law by yielding him the right of way.
>
> 7. DUTY OF PARTY NOT PREFERRED. The driver of a vehicle who does not have the right of way must permit the other party to proceed without interruption. He must not move into the highway or that part of the highway about to be occupied by the preferred party, if such movement would interfere with the progress of the preferred party. The party who does not have the right of way must look at such times and places in a manner that will make his looking effective, and he must wait and travel at a speed slow enough to stop and avoid entering the path of the approaching vehicle having the right of way. Failure to yield the right of way to a preferred party is negligence.
>
> * * * *

{¶ 10} Appellant objected to appellee's proposed right-of-way instruction. He asserted that the instruction does not apply when vehicles are traveling in the same direction, as were his vehicle and appellee's vehicle. Instead, appellant claimed that a right-of-way instruction may be appropriate when vehicles are traveling in opposing directions.

{¶ 11} Before the trial court instructed the jury, appellant additionally objected to a proximate cause instruction (again, even though his proposed jury instructions contained a proximate cause instruction). Appellant voiced his proximate-cause and right-of-way jury instruction objections as follows:[3]

[3]We recognize that word use usage errors many times originate with the court reporter rather than counsel. The large number

It is Plaintiff's position that the that Proximate Cause is, Proximate Cause of injury to the Plaintiff. In this case I think there's no doubt that there was injury to the Plaintiff as a result of the accident, so thus Proximate Cause is not an issue as far as proximate cause to the injury. The Proximate Cause under the Ohio Jury Instructions is Proximate Cause if the negligence was Approximate [sic] Cause of the accident. Our duty is to prove that the defendant was negligent. To do so we had to set forth duties that she has to follow that, that the Court finds applicable to this accident. If those duties are set forth and we prove, jury finds that there was breech [sic] of duty then that, we don't have to show Proximate Cau, [sic] that the breech [sic] of the duty was the Proximate Cause of the accident, that's already built into the breech [sic] of the duty. If there was a duty involved in operating the vehicle and that breech, [sic] there was a breech [sic] of that duty, again the obligation that, the duty would be one that is applicable to the accident. * * * * In this case the duty to the particular accident is changing lanes unsafely, failure to provide a look basically as far as the defendant is concerned. If those duties are given to the jury and the jury finds that there was failure of ordinary care or in effect a breach of the duty, ordinary care's the language in the jury instructions, then the defendant would be negligent. We don't have a second hurdle we have to go over showing that, that negligence was Proximate Cause of the accident. That's built into negligence. So we would ask that Proximate Cause be removed totally and I understand we discussed this at in [sic] chambers, the Court was inclined to leave it in as and we changed it in relation to the accident. Everyone agreed it's not Proximate Cause as far as the injury or damages. So if Proximate Cause is going to stay in at all, the Plaintiff's position should say Proximate Cause of the Accident but we don't believe the law in Ohio requires us to prove negligence and Proximate Cause of the accident. Um the other provision that I believe that the defense wanted in, I believe should be taken out is failure to give, is the right of way language * * * and the main reason is you look at the definition of Right of Way in that entire jury instruction means the [sic] right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which he or she is moving in preference to a vehicle approaching from the different direction, from a different direction into his or her path. So, so the right of the law [sic] regarding right of way deals with * * * cars coming [from] different directions. We already have three different statutes obligation [sic] for putting in regarding overtaking vehicles. Vehicles that are overtaking and whether or not, in fact there's language in there that gives us certain requirements that have to be done in order for him to overtake and be allowed to overtake but the right of way is different directions of vehicles so that I think is a duplicate of, creates an additional burden is not on uh Mr. Halloran and I think that's it.

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of homophones in the English language can create much confusion for native and non-native speakers alike.

{¶ 12} In response, appellee asserted that "in a personal injury case, the Plaintiff has to prove not only Negligence but Proximate Cause that the Negligence is somehow related to the accident * * *. I think the Courts [sic] uh splitting of the baby and changing the words to the accident uh takes care of any concern that I have and I think it should go forward as written." Appellee claimed that the right-of-way instruction was appropriate because "if [appellee] was making a lawful left turn, she was going in a different direction than [appellant] and if she was legal in doing that, he had to give her the right of way."

{¶ 13} After consideration, the trial court disagreed with appellant's position and explained:

> * * * * [T]he Court has continuously been advised this case does not deal with injury or damages. It deals with liability only. Is there, is there liability assessed upon the defendant in such a sufficient degree that the plaintiff is entitled to recover. * * * Ohio Jury Instructions deals [sic] with a specific instruction about proximate cause * * * as to the injury, but the, when the parties elected to take out and this is a personal injury case * * * and that's the basis of the case. * * * * But I do believe that it is still necessary to prove not only uh was there or was there not negligence and what kind of negligence uh on the part of the defendant and/or the plaintiff but resultant condition that cause in regards [sic] uh to whether the accident uh was proximately caused by that negligence or not.

The trial court ultimately gave the jury the following proximate cause instruction:

> A party who seeks to recover for damages must prove not only that the other party was negligent, but also that such negligence was a proximate cause of the accident.
>
> Proximate cause is an act or failure to act which, in the natural and continuous sequence, directly produces the accident, and without which it would not have occurred. Cause occurs when the accident is the natural and foreseeable result of an act or failure to act.
>
> There may be more than one proximate cause. When the negligent act, or failure to act, of one party combines with or joins the negligence of each is a cause. It is not necessary that the negligence of each occur at the same time nor that there be a common purpose or action.
>
> A person is not responsible for the accident if his negligence is a remote

> cause and not a proximate cause. A cause is remote when the result could not have been reasonably foreseen or anticipated as being the natural or probable cause of the accident.
>
> Under the facts of this case, in order to prevail, plaintiff must convince you by a preponderance of the evidence, not only that the defendant somehow failed to meet the requisite standard of care, but also that this failure in probability proximately caused the accident complained of by plaintiff.
>
> * * * *
>
> If you find the negligence of both parties proximately caused the accident, you will determine the percentage of negligence of each party in the interrogatory that will be explained by the court."
>
> The court also explained "the rights and duties of each party so that you may decide whether anyone was negligent." The court explained:
>
> * * * * Drivers of motor vehicles * * * have the duty to use ordinary care, both for their own safety and for the safety of others. Failure to use such care is negligence.
>
> * * * *
>
> A person is not negligent unless a failure to use ordinary care of an act or failure to act as the law requires is proved by the greater weight of the evidence.

{¶ 14} The trial court next explained appellant's claim that "while he was passing the defendant, the defendant negligently failed to give way to the right in favor of the plaintiff, which proximately caused injury to the plaintiff." The court stated:

> Before you can find for the plaintiff, you must find by the greater weight of the evidence that
>
> (a) the defendant failed to give way to the right in favor of the plaintiff who was overtaking the defendant after an audible signal from the plaintiff; and
>
> * * * If you find by the greater weight of the evidence that the defendant failed to give way to the right in favor of the plaintiff, who was overtaking the defendant after an audible signal from the plaintiff, you must find that the defendant was negligent.

The court also explained the "right of way" to the jury:

> "Right of way" means the right of a vehicle to proceed uninterruptedly in a lawful manner in the direction in which he or she is moving in preference to another vehicle approaching from a different direction into his or her path.
>
> * * * The word approaching means that a vehicle is so close in distance and time that a collision will occur if the driver who does not have the right of way does not stop or reduce his or her speed and yield the right of way to the

> preferred party.
>
> * * * To keep his right of way as a preferred party to continue to travel uninterruptedly, the driver must operate his vehicle in a lawful manner. If he does not do so, he loses the right of way and his status as the preferred party.

{¶ 15} On February 24, 2016, the jury found in favor of appellee and against appellant. The jury's answer to the first interrogatory indicates that the jury determined that appellee was not negligent. On February 29, 2016, the trial court filed a judgment entry that dismissed the case. This appeal followed.

{¶ 16} Appellant's first and second assignments of error both challenge the trial court's jury instructions. For ease of discussion, we consider them together.

{¶ 17} In his first assignment of error, appellant asserts that the trial court erred by giving the jury a proximate cause instruction. Appellant claims that the parties' stipulation as to the amount of damages appellant should be awarded if the jury found appellee fifty percent or more negligent obviated the need for a proximate cause instruction. He asserts that the parties' damages stipulation means that "the parties had, in effect, stipulated to the proximate cause of [appellant]'s injuries and the amount of damages to be awarded for these injuries, and thus, the matter was being submitted on the issue of liability only."

{¶ 18} Appellant also objects to the trial court's instruction that the jury "determine whether the negligence of [appellee], if any, was the proximate cause of the 'accident.'" Appellant contends that use of the word "accident" instead of "injury" misled the jury.

{¶ 19} Appellant further argues that the trial court incorrectly instructed the jury that it should first determine whether appellee's negligence was a proximate cause of appellant's

"accident" before it could compare negligence. Appellant thus alleges that the "trial court placed an undue burden upon [appellant] and required an additional step to prove negligence and by requiring proximate cause of the accident in addition to negligence and then having a jury determine a percentage of fault [sic]."

{¶ 20} In his second assignment of error, appellant asserts that the trial court erred by giving the jury a right-of-way instruction. Appellant argues that this instruction does not apply when two vehicles are proceeding in the same direction. Rather, he claims that a right-of-way instruction is appropriate when "vehicles are approaching in opposite directions and a collision occurs regarding any question as to who had the right-of-way to proceed in the direction the vehicle was traveling."

A

STANDARD OF REVIEW

{¶ 21} "Requested jury instructions should ordinarily be given if they are correct statements of law, if they are applicable to the facts in the case, and if reasonable minds might reach the conclusion sought by the requested instruction." *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶240, citing *Murphy v. Carrollton Mfg. Co.*, 61 Ohio St.3d 585, 591, 575 N.E.2d 828 (1991); *accord Cromer v. Children's Hosp. Med. Ctr. of Akron*, 142 Ohio St.3d 257, 2015-Ohio-229, 29 N.E.3d 921, ¶22 (explaining that jury instructions must "correctly and completely state the law" and that the evidence presented at trial must warrant the jury instructions). Furthermore, when "examining errors in a jury instruction, a reviewing court must consider the jury charge as a whole and 'must determine whether the jury charge probably misled the jury in a matter materially affecting the complaining party's substantial rights.'" *Kokitka v.*

Ford Motor Co., 73 Ohio St.3d 89, 93, 652 N.E.2d 671, (1995), quoting *Becker v. Lake Cty. Mem. Hosp. W.* (1990), 53 Ohio St.3d 202, 208, 560 N.E.2d 165, 171. "The question of whether a jury instruction is legally correct and factually warranted is subject to de novo review."[4] *Cromer* at ¶22*; accord Estate of Hall* at ¶26 (reviewing "de novo whether the evidence supported a jury instruction").

B

PROXIMATE CAUSE

{¶ 22} "It is fundamental that in order to establish a cause of action for negligence, the plaintiff must show (1) the existence of a duty, (2) a breach of duty, and (3) an injury proximately resulting therefrom." *Armstrong v. Best Buy Co.*, 99 Ohio St.3d 79, 2003-Ohio-2573, 788 N.E.2d 1088, ¶8, quoting *Menifee v. Ohio Welding Prod., Inc.* (1984), 15 Ohio St.3d 75, 77, 15 OBR 179, 472 N.E.2d 707. "Liability in negligence is dependent upon the existence of a proximate cause relationship between breach of duty and injury suffered." *Hester v. Dwivedi*, 89 Ohio St.3d 575, 583, 733 N.E.2d 1161 (2000). "Causation requires a factual nexus between the breach and injury (i.e., actual cause) and a significant degree of connectedness that justifies imposing liability (i.e., proximate cause)." *Schirmer v. Mt. Auburn Obstetrics & Gynecologic Assoc., Inc.*, 108 Ohio St.3d 494, 2006-Ohio-942, 844 N.E.2d 1160, ¶40, citing *Hester*, 89 Ohio St.3d at 581. "The law of negligence does not hold a defendant liable for damages that the defendant did not cause." *Hester*, 89 Ohio St.3d at *583.* Consequently, a proximate relation between a plaintiff's injury and a defendant's negligence is an essential component of a

[4] Interestingly, the supreme court has also stated that a trial court's decision to reject a requested jury instruction is subject to discretionary review. *See Adams* at ¶240; *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096, ¶152-153.

negligence action.

{¶ 23} In the case sub judice, we do not believe that the trial court erred by giving the jury a proximate cause instruction. Appellant apparently argues that he was not required to prove proximate cause in this negligence action because the parties stipulated that he had sustained $100,000 in damages as a result of the accident, and that the parties also agreed that appellee's negligence proximately caused his damages. However, a stipulation that appellant sustained $100,000 in damages as a result of the accident is not the same as a finding that appellee's negligence proximately caused those damages. The parties' stipulation essentially suggests that they agreed that appellant sustained injuries as a result of the accident and that the accident was a (or the) proximate cause of his injuries. The parties did not, however, stipulate that appellee's negligence was a proximate cause of the accident or appellant's injuries. Thus, according to the principles applicable to negligence actions, proximate cause was an essential component of appellant's case that he needed to prove in order to demonstrate appellee's liability for his injuries. Therefore, we believe that the trial court's proximate cause jury instruction was appropriate in light of the facts and was a correct statement of the law applicable to appellant's negligence action.

{¶ 24} To the extent that appellant argues that the trial court misstated the law by instructing the jury regarding the proximate cause of the "accident," as opposed to the proximate cause of appellant's "injuries," we point out that appellant appears to have agreed to the word choice. Appellant argued before the trial court: "So if Proximate Cause is going to stay in at all, the Plaintiff's position should say Proximate Cause of the Accident but we don't believe the law in Ohio requires us to prove negligence and Proximate Cause of the accident." Moreover, in

his reply brief, appellant asserts: "The proper way to proceed with this case was to have a negligence instruction and then have the jury answer whether or not she was negligent. If they found she was not, then that case would have been over." This appears to be what happened in the case at bar. *See generally Parusel v. Ewry*, 6th Dist. Lucas No. L-02-1402, 2004-Ohio-404, 2004 WL 190077, ¶81 ("Since both of the instructions of which appellant complains go to apportionment of negligence or damages and the jury returned an interrogatory finding that appellee was not negligent, the jury would never have needed to reach these issues. As a result, any error in instructing on these issues could not have prejudiced appellee. Consequently, any purported error was necessarily harmless.").

{¶ 25} Additionally, although not entirely clear, appellant seems to believe that the jury should have considered proximate cause in the context of the parties' comparative negligence. However, "[t]he issue of comparative negligence is never reached if * * * there is no negligence to compare." *Nageotte v. Cafaro Co.*, 160 Ohio App.3d 702, 2005-Ohio-2098, 828 N.E.2d 683, ¶29 (6th Dist.). Comparative negligence thus is not an issue unless "the defendant, as well as the plaintiff, was negligent. *Seeley v. Rahe*, 16 Ohio St.3d 25, 26–27, 475 N.E.2d 1271 (1985) (noting that comparative negligence statute "triggered by the fact finder's determination that the defendant, as well as the plaintiff, was negligent").[5]

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[5] R.C. 2315.33, the comparative negligence statute, states:

> The contributory fault of a person does not bar the person as plaintiff from recovering damages that have directly and proximately resulted from the tortious conduct of one or more other persons, if the contributory fault of the plaintiff was not greater than the combined tortious conduct of all other persons from whom the plaintiff seeks recovery in this action and of all other persons from whom the plaintiff does not seek recovery in this action. The court shall diminish any compensatory damages recoverable by the plaintiff by an amount that is proportionately equal

{¶ 26} In sum, our review of the trial court's jury instructions as a whole fails to convince us that the trial court misstated the law regarding proximate cause in a manner that materially affected appellant's substantial rights. We do recognize that this area of the law can be confusing to all concerned, especially in view of the unique facts present in the case sub judice. However, we conclude that appellant's argument that the trial court erred by giving the jury a proximate cause instruction is without merit.

{¶ 27} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

C

RIGHT OF WAY

{¶ 28} Appellant next complains that the trial court erred by giving the jury a right-of-way instruction. In particular, appellant contends that the evidence in the case did not warrant a right-of-way instruction. Appellant posits that a right-of-way instruction is inappropriate when the vehicles involved in an accident are traveling in the same direction.

{¶ 29} R.C. 4511.01(UU)(1) defines "right-of-way" as "[t]he right of a vehicle * * * to proceed uninterruptedly in a lawful manner in the direction in which it * * * is moving in preference to another vehicle * * * approaching from a different direction into its or the individual's path."

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to the percentage of tortious conduct of the plaintiff as determined pursuant to section 2315.34 of the Revised Code.

By its terms, the statute does not apply unless the party or parties from whom the plaintiff seeks relief committed "tortious conduct."

{¶ 30} Appellant claims that his motorcycle and appellee's vehicle were proceeding in the same direction and thus, that a right-of-way jury instruction was wholly inapplicable. We, however, agree with appellee that the facts show that appellee was turning her vehicle left into a parking lot while appellant was approaching from behind. Thus, appellant, who was driving straight in an attempt to pass appellee, was actually traveling in a different direction (straight) from appellee, who was turning left into a parking lot. We therefore disagree with appellant that the evidence did not support a right-of-way instruction. *See generally Somogyi v. Natl. Eng. & Contracting Co.*, 8th Dist. Cuyahoga No. 68694, 1996 WL 11318, *2 (rejecting narrow interpretation that vehicles must be proceeding on intersecting path and determining right-of-way instruction appropriate when vehicles proceeding in same lane, but in different directions).

{¶ 31} Moreover, we point out that appellant did not cite any legal authority to support his assertion that a right-of-way instruction was inappropriate based upon the evidence presented in the case sub judice. *See In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 271, 2011-Ohio-2638, 951 N.E.2d 751, ¶14 (failure to cite legal authority or present an argument that a legal authority applies on these facts and was violated * * * is grounds to reject [a] claim); *Robinette v. Bryant*, 4th Dist. Lawrence No. 14CA28, 2015-Ohio-119, 2015 WL 223007, ¶33 ("It is within our discretion to disregard any assignment of error that fails to present any citations to cases or statutes in support.").

{¶ 32} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J.: Concurs in Judgment & Opinion
Hoover, J.: Concurs in Judgment Only

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.